M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1344	Press Mis.—
56-57 Dated	9 - 9 - ~~19~~ 1864	

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Not to be folded or roughly handled

P/ 823

No. 56. Read the following letter from G. S. FORBES, Esq., Collector of Ganjam; to J. D. SIM, Esq., Secretary to Government, Madras, dated Chetterpore, 24th August 1864, No. 195.

I have the honor to forward herewith translation of a plaint filed in the Civil Court of Chicacole by P. Nursiah, Sub-Magistrate of Sompetta, against my Assistant Captain Marshall, in case No. 12 of 1864, for the recovery of damages to the extent of Rupees 5000 for defamation of character, together with the proposed answer. The date originally fixed for the hearing having expired with this day, I have instructed the Government Pleader to apply for an extension of six weeks. The answer appears to meet the requirements of the case, and I therefore request you will be good enough to obtain the sanction of Government for defending the suit at public cost.

To the Civil Court of Chicacole.

Plaintiff.	*Defendants.*
Paramkusam Narsaya Pantulu of Sompetta, for the present by profession Sub-Magistrate of Sompetta.	1. Captain R. C. A. Stuart, Superintendent of Police, Ganjam District, at Chetterpore. 2. Captain R. C. A. Marshall, Assistant Magistrate of Ganjam, at Russelcondah.

The suit has been brought under Section 26 of the Civil Procedure Code.

When the Plaintiff was Sub-Magistrate of Aska and carrying on his duties in accordance with the law, the 1st defendant without cause accused him with having committed certain offences, and in opposition to the law issued an order in writing for his (plaintiff's) arrest without warrant from the proper authorities, and sent it by Constables at 4 o'clock P.M. of the 6th April 1864, and the plaintiff was taken to Russelcondah under the surveillance of two Constables. Although the offences were bailable and the plaintiff offered security, yet the 2nd defendant declined the bail and confined him (plaintiff) in the station-house for 13 days. Of the four charges framed by the defendants, two were sent up to the Session Judge, who dismissed one of them for want of proof, and rejected the other as unworthy of placing on the file. The other two cases were sent up to the District Magistrate, who dismissed one without taking into the file, and the other for want of proof. The plaintiff is a respectable man, having held high appointments, such as Tahsildar of Moherry; and his ancestors also filled similar appointments and led a respectable life. The acts of the defendants subjected the plaintiff to disgrace. He therefore prays the Court for the recovery from the defendants of damages to the extent of Rupees 5000, together with costs of the suit.

9th July 1864.

I (the plaintiff) do declare that what is stated therein is true to the best of my belief and information.

The order of the 1st defendant for the arrest of the plaintiff, and that of the District Magistrate appointing him (plaintiff) to the post of Sub-Magistrate at Sompetta, are herewith produced. The cause of action took place on the 8th April 1864.

(Signed) P. NARSAYA.

(Signed) P. PAPANNA SASTRY,
Pleader.

(True Translation.)

(Signed) G. S. FORBES,
Collector.

Proceedings of the Madras Government, Judicial Department, 9th September 1864.

Statement of Captain R. C. A. MARSHALL, Acting Assistant Agent, 2nd Defendant in Original Suit No. 12 of 1864, on the file of the Civil Court at Chicacole.

In reply to the plaint in Suit No. 12 of 1864, brought by Paramkusam Nursiah Pantulu, plaintiff, against Captain Stuart, 1st defendant, to recover Rupees 5000 damages for loss sustained by defamation of character, in having been imprisoned for thirteen days by myself, &c. &c, I beg to state that Act XVIII of 1850 lays down that "no suit is to be filed in any Court against a Magistrate for imprisonment either within or without his jurisdiction, if done in good faith," and the Court is already aware, from my official letter No. 82, dated 16th May 1861, that such was the case. This suit against myself is therefore from that and the following reasons liable to dismissal.

I.—Good faith, believing myself justified by law in doing what I did.

II.—Want of malice.

III.—Plaintiff has not suffered in his reputation or person.

1st. On the 6th April 1864, when plaintiff was produced before my Court late in the evening charged with offences under Sections 109, 110, 111, 113, 114, 115, 117, 119, 120, 161 and 193 of the Penal Code, a remand warrant was demanded by 1st defendant, which was given by me, Section 115 not being bailable. During the subsequent preliminary inquiry held by me offences under Sections 193, 116, 161, and 506, of the Penal Code were established against plaintiff, and a further remand granted, inasmuch as I firmly and conscientiously believed Section 116 to be a non-bailable offence, and it being so entered in the pocket copy of the Indian Penal Code and Criminal Procedure which I have invariably used during the past two years; nor did I become aware of my error until after I had written a letter, No. 45, dated 18th April 1864, to the Agent pointing out that plaintiff's offence was not bailable, in reply to his letter, No. 38, dated 15th April 1864, ordering me to release plaintiff on bail at once. This letter I gave to my writer to take a copy for record, and after I had done so, it occurred to me that there was perhaps some reason for the Agent directing to let plaintiff out on bail, and I ordered my Head Gumastam to look up any subsequent orders there might be affecting the Schedule, and to my astonishment I then learned that Section 116* was bailable or not bailable according as the offence abetted was bailable or not bailable, and I at once released plaintiff on bail; nor was I the only person who believed Section 116 to be not bailable; 1st defendant, Inspector Bartley, and Inspector Glasson, were of the same impression, nor is it extraordinary such an error should have been committed; for even Mr. Mayne in his 3rd Edition of his Commentaries on the Penal Code, which from its preface I learn was published in October 1862, or six months after the Gazette above alluded to was published, still leaves Section 116 in the Schedule as not bailable, although he states in his preface that the book has been most carefully revised and amended. Moreover, if plaintiff who was a Magistrate at the time he applied to be released on bail was aware of his offence being bailable, it was clearly his duty to point this out to me, whereas his not doing so was conniving at my falling into the error which he now bases his suit on.

* Vide 2nd Supplement "Fort Saint George Gazette," dated 16th May 1862.

2nd. To constitute defamation there must be malice; of this there was none, nor has plaintiff ever alleged malice in his plaint. During the time of plaintiff's confinement he was treated with marked respect, for he was not put on prison diet, but allowed his own cook and his own food, his own bed to sleep on, his doors and windows open day and night, and also allowed to perform his customary ablutions, and, moreover, he was allowed by me to be on bail from the afternoon of the 19th to the afternoon of the 21st April before he produced his sureties to execute the bail bond.

3rd. Plaintiff has not suffered in his reputation as his re-instatement as Sub-Magistrate proves. In a pecuniary point of view he has sustained no loss, for he has not lost caste, as no low caste person was allowed to be confined in the same room with him; in fact during nearly the whole time of his confinement he had a room to himself. Doubtless plaintiff's feelings may have been hurt, but for that alone no action for damages lies—Vide page 109 of the Sudder Court's Decrees for 1859.

Judicial Department.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter fro

the Collector of Ganjam

(Here enter 26th August 1864 No.

Order thereon 9th September 1864 No.

The Government ar
able to sanction the defence
this Suit at the public expe
as it is entirely of a perso
character.

2 When the suit is dec
they will determine whet
the expense shall be born
by the State or not.

To the Collector of Ganjam dispatch 14/9

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Judicial 1864. Department.

No. 1344

PROCEEDINGS *of* GOVERNMENT.

Dated 9 September 1864

Encl to No. 1 of 10th Sept 1864

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